



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 9, 1996

Mr. Dale W. Lee
Regional Attorney
Texas Department of Protective and Regulatory Services
P.O. Box 3700
Amarillo, Texas 79116-3700

OR96-1097

Dear Mr. Lee:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 31425.

The Texas Department of Protective and Regulatory Services (the "department") received a request for any records concerning the investigation of a certain individual for alleged child abuse. The requestor states that he seeks only the records in closed cases. The requestor is an attorney for the alleged perpetrator, who is a parent of one of the victims of the alleged abuse. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code.

Section 261.201 of the Family Code provides that, except as otherwise provided by that section, the files, reports, records, communications, and working papers used or developed in an investigation under chapter 261 or in providing services as a result of an investigation are confidential and not subject to release under chapter 552 of the Government Code. Fam. Code § 261.201(a)(2). Subsection (f) of section 261.201 provides:

(f) Notwithstanding Subsection (b), the department, on request and subject to department rule, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if the department has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure.

Subsection (b), which is not applicable here, describes the conditions when a court may order the disclosure of information made confidential by subsection (a). Subsection (f) appears to require the department to provide certain parties, including a parent of a child who is the subject of a child abuse investigation, the information made confidential by subsection (a), with certain redactions. As the requestor here is an attorney for the parent of the child involved in the investigation, we must consider whether the department is required to release the requested information to the requestor pursuant to subsection (f). However, because the department's release of the information pursuant to subsection (f) is "subject to department rule," we must first consider whether the department's rules provide for the disclosure of the requested information to the requestor.

Section 700.102 of title 40 of the Texas Administrative Code states that:

Information about a child protective services client is confidential and may not be released except as authorized by statute, federal regulation, court direction, attorney general's opinion, and the [department's] rules concerning disclosure of information and confidentiality of information in Chapter 734 of this title (relating to Public Information).

Section 700.102 directs us to consider other department rules concerning the disclosure of client information. Section 700.103 of title 40 of the Texas Administrative Code provides:

A child protective services client may review all information in the client's case record except the identity of the complainant, *information exempted from disclosure under the Open Records Act*, and information exempted under other state laws.

40 T.A.C. § 700.103 (emphasis added). This rule permits a "client" to review that client's case record, with the exception of the complainant's identity. *See also* 31 T.A.C. § 734.11(c) (permitting client review of case record information, with certain exceptions). We assume that the requestor, a parent of the alleged victim, is a client for purposes of section 700.103. This regulation provides an exception to a client's right to review information in the client's case record if it contains information "exempted from disclosure under the Open Records Act." We now proceed to consider whether the information at issue is exempted from disclosure under the Open Records Act.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. The department has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990)


at 4. The department must meet both prongs of this test for information to be excepted under section 552.103(a).

You have enclosed a letter from Mr. L. Charles Slaughter, Assistant District Attorney for the 47th District Attorney's Office, in which Mr. Slaughter requests that the department withhold the requested information because a case "is currently under official investigation by this department [and] under current or pending criminal prosecution." The letter also states that the release of the requested records would hinder the investigation or prosecution of the case. We believe that the letter from the assistant district attorney establishes that the requested information relates to pending litigation. We therefore conclude that the requested records may be withheld from required public disclosure under section 552.103 of the Government Code.

We note that when the opposing party in the litigation has seen or had access to any of the information in these records, there is no justification for withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) generally ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).¹

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

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Ref.: ID# 31425

Enclosures: Submitted documents

¹We note that there may be a conflict between the provisions of section 261.201(f) and the department's current regulations, as section 261.201(f) appears to be a parental access provision while the department's regulations permit the department to withhold information from the parent. We are confident that this apparent conflict will soon be resolved by the department's enactment of new regulations.

cc: Mr. Warren L. Clark
110 West 5th Avenue
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(w/o enclosures)